was evidence of a rescission sufficient to justify a verdict for the plaintiff. *Schwartzreich v. Bauman-Basch Inc.* (1918, Sup. Ct. App. T.) 172 N. Y. Supp. 683.

This appears to be an ordinary case where an increase of salary is agreed upon before the end of the contract period. It is highly improbable that at any instant prior to execution of the second contract the defendant could have dismissed the plaintiff without having to pay damages or that the plaintiff was at liberty to refuse to work. The only change in the legal relations of the parties was that the defendant's duty to pay $90 per week was replaced by a duty to pay $100 per week. The court's willingness to permit the jury to indulge in the fiction of a total rescission shows that the plaintiff's counsel conceded too much when he conceded that "a promise by one party to do that which he is already under a legal obligation to perform is insufficient as a consideration." Such has, indeed, been stated to be the rule in *Vanderbilt v. Schreyer* (1883) 91 N. Y. 392 and other New York cases; but if the plaintiff had not himself threatened a breach of contract, a strong argument in his favor could be founded upon *DeCicco v. Schweizer* (1917, N. Y.) 117 N. E. 807. See Corbin, *Does a Pre-existing Duty Defeat Consideration?* (1918) 27 YALE LAW JOURNAL, 362. It is believed that the existing commercial and social *mores* do not justify the defendant in refusing to pay the new salary; and if so, it is certain that the courts will bring the law of consideration into harmony with the *mores,* as the court did in the principal case, by the use of fiction if necessary. The making of the new agreement can always be held to be evidence from which a rescission of the prior contract can be "implied"; the jury will do the rest.

CONTRACTS—IMPOSSIBILITY OF PERFORMANCE—PRECEDENCE OF WAR ORDERS BY GOVERNMENT.—A buyer claimed damages for non-delivery of goods as per contract. The seller replied that it was prevented from delivering by reason of orders for goods given by the United States government for war purposes, these orders having precedence by Act of Congress. The contract contained an express provision as to strikes, accidents, and reasons beyond the seller's control. The government agents expressly demanded precedence for their orders, although this was done in an informal manner. *Held,* that the government order was not voluntarily sought by the seller and that the buyer was not entitled to damages for non-delivery. *Moore & Tierney v. Roxford Knitting Co.* (1918, N. D. N. Y.) 250 Fed. 278.

In a later case on similar facts it was found as a fact that the seller voluntarily sought the government contract and that the government agents had not demanded precedence in accordance with the Act of Congress until after the defendant had had ample time to perform its previous contract. *Held,* that the defendant had no excuse for non-performance. *Mawhinney v. Millbrook Woolen Mills* (1918, N. Y. Sup. Ct.) 172 N. Y. Supp. 461.

See COMMENTS, p. 399.

CONTRACTS—INCREASED EXPENSE DUE TO WAR—STRIKE, ACCIDENT, AND WAR CLAUSE.—In a contract for the manufacture and sale of "chamber acid" generally made from pyrites, it was provided that "war . . . or other uncontrollable causes rendering the sellers unable to deliver shall make this contract inoperative during the continuance of the difficulties." The war broke out later in Europe, and in 1917 the activity of the German submarines made it impossible to obtain a sufficient supply of pyrites. A better acid could be made from brimstone, which was obtainable, but the expense would have been